

INFORMATION

*For the Merchants of Edinburgh,
Against
John Mitchel &c. Vintners there.*

THe Wine Merchants of *Edinburgh* according to their usual Custom sell the Wines imported by them of the growth 1697. to the Vintners at the price current, and so the Vintners do generally buy and take their own price again as *Retailliers from the Leiges* untill your Lordships toward the end of the last Winter Session, thought fit according to the power and Direction given to your Lordships, in these matters to regulate the price of Retailizing at 32. *sh. Scots per pint*; To which the Merchants albeit sensible of the prejudice they might sustain by it, did nevertheless Submit.

But after the Winter Session some Vintners from particular Motives and Designs, or rather partly from pinch and necessity, and partly from Emulation and desperat ill Humor, hoping thereby also to put off their old decayed and corrupt Wines, run down the price on a sudden to 20. *sh. Scots per pint*, to the surprise of all that understood any thing in this Affair, yet such indeed was the force of this ill Practice throw the advantage that the Leidges did readily take of it when so freely offered, that the rest of the Vintners were drawn to a Compliance.

The Merchants on the other hand, perceiving that this Course would certainly tend to their prejudice; and be made a pretence as to the determination of the price current: Some of them, *viz: Robert Watson, John Duncan, James Byres and James Camming* Merchants, finding the Vintners, to whom they had sold, beginning to be refractory and deny what all the Year till then, had been generally repute the Price current, pursues some of the Vintners, *viz: William Ross, John Mitchel, Charles Dallas and Alexander Hay* before the Baillies of *Edinburgh*, for the price of the Wines, they had sold them of the said growth 1697, in which Pursuit, the Baillies, (particularly *BAILLIE MENZIES*) do very justly, first upon the 9 of *June* instant, sustain a special price to be proven; *Scripto vel juramento*: And then upon the eleventh of *June*, where no special Agreement was alledged, they find the Defenders lyable for the Wines lybelled at the Prices lybelled, the Pursuers proving the same to be the price current, the time of the delivery of the Wines; but do also sustain this Defence, *viz*, that the Pursuers thereafter consented to give Abatement upon the Price, as the Wine should fall the time of the running relevant, to give the Defenders a proportional Deduction of the Price lybelled; And this to be proven *Scripto vel juramento* of the Pursuers

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fuers : And *William Ross* the Defender, having in consequence of these Interloquitors, produced for Probation, a Declaration granted to him by *Ja: Byres* his particular Merchant, dated the 29 March last, and bearing what Wines he had sold and delivered or should sell or deliver to *William Ross* Vintner of the Vintage 1697, should be understood no otherwise payable, then at the current rate the time of its running, and being vented, That is, according to any Act crying down the price ; Or the Merchants themselves lowering it, referring the Quantity that should then remain upon *William Ross* his hand unsold to *Williams* own Declaration : The said Baillies upon the said 16 June found it proven, that the said Pursuer *James Byres* had taxed his price of the Wines libelled, as the same should be cryed down by Law, or the Merchants themselves should low it the time of the running : And therefore did admit it to Mr, *Ross* his Probation, how far the Merchants themselves had diminished the price of the Wines:

But tho these Interloquitors be all of them very just save the last, which is only too favourable to Mr. *Ross* the Defender, in admitting to his Probation, how far the Merchants had diminished the Price of the Wines, which in effect should have been tryed by a joynt Probation. Yet the Vintners gave in a Bill of Advocation to your Lordships, and thereupon obtain a sist of Proces, untill the Pursuer should see and answer, which having brought the Question Refuse or pass, before the Lord *Pseudo* Ordinary; The Vintners repeated the Reasons of Advocation, viz. 1 That the Baillies were themselves Wine Merchants *et fovēbant similem causam*. And 2: The Lords are most proper and competent Judges to determine the price of Wines as well as of all other Vivers. And 3 That the Baillies had done Iniquity in tying the Vintners to prove their particular Bargains, and Agreements *Scripto vel juramento* of the Pursuers ; And not *pro ut de jure* the Pursuit being intented within three years:

To which it was answered, for the Merchants, that they were far from declining the Lords Judgement in the principal Cause, but on the contrary, were ready to crave the same to be discussed summarily upon the Bill : But the true state of the case and the Merchants great concern was to make as short Proces as possible ; It being evident to them as it may be to all considering Persons, that beside the uncertainty of the Condition of many Vintners the ill advised and desperat Practise that they had now fallen into by underselling so visibly, only for a little ready Money, would discuss many of them and their Fortuns, before the Cause could be discuss and terminat, according to the ordinar course before the Lords : For albeit an Interloquitor *in jure* might quickly be given in this Matter ; Yet it was evident, that there must be both Acts and Probation upon the Allegiance *in facto*, which according to the form of Proces before the Lords would certainly delay the advising and final determination for more then a twelve moneth at least : And therefor all that the Merchants craved in the entry was, that either the Bill might be refused, or Vintners ordained instantly to find Caution *Judicatum Solvi*, and then the Merchants should Advoca: of consent.

But because this last demand of Caution was rejected by the Vintners, therefore the Merchants did make answer more particularly. And to the 1st Reason, that they had intended their pursuit before the Baillies of *Edinburgh*, the most proper and competent Judges betwixt Burges and Burges. 2. That if some of the Baillies having any dealing in wines, tho it be no very just Exception, yet the Merchants were free to decline him, And the truth is of all the four Baillies that sit only monethly *per vices*, Baillie *Nairn* is the only person that deals in Wine, at least it is most certain that Baillie *Menzies* who sat

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sole Judge, and past the foresaid Interloquitors, had no dealing in Wines for the said Cropt 1697 neither directly nor indirectly, nor could he so freely deal as a Merchant therein, because of his known Employment otherways about the Customs, whereby it is manifest that the foresaid first Reason of Advocation was no just Reason, for the Vintners Burgeses to decline their own Baillie Court.

2. It was Answered to the second Reason, that the Lords are certainly not only intrusted with the directing and regulating of the price of Wines, as of all other vivers, but most sufficient to Judge to determine in all matters whatsoever. Yet 1. The power given to the Lords by the Act of Parliament to regulat the price of Wines and other Vivers, as to the Conveniency of the Lieges, and to prevent their Extortion, is not a power to determine the price of Wines in grosse betwixt Merchant and Vintner, nor doth the Lords In the regulating of Prices proceed by way of judgement betwixt Party and Party, but only give direction to the Magistrats of *Edinburgh ex officio nobili*, which is nothing to this purpose. And 2. The Merchants do again declare before your Lordships, that they are most willing to have your Lordships determination in this matter, and do decline it in no regaird, save to prevent delayes, by reason of your Lordships *Form of Process*, which they know certainly will be large more prejudicial to the Vintners themselves than to the Merchants; and therefore let them but find Caution, and they shall have all they demand.

3. It is answered to the third Reason, that the Baillies committed no iniquity, but on the contrary did proceed most justly, as appears by the Interloquitors above set down, and all the partial favour that can be therein observed, is plainly in favours of Mr. Ross the Defender, who was admitted to a sole probation when it should have been a joynt Probation: The Bailies find the price *current* probable *pro ut de jure*, as certainly it is, then they find particular Agreements either for Prices or Abatements probable *scripto vel juramento*, & what could be more just, A Bargain of Merchandize, and the delivery of Goods may doubtless be proven *pro ut de jure*, but if the price bargained be alledged to be above 100 *lib. Scots*, it must be proven *scripto vel juramento*, or else taxed at the current Rate; and this is so certain, that it is amongst the first principles of our Law, so that it is strange the Vintners would alledge any Iniquity in this matter.

But upon the whole, the Merchants do again humbly and earnestly represent to your Lordships, that their principal Concern is, to have this matter dispatched, They fear not the Justice of their Cause, which they know can not miscarry either before your Lordships or the Baillies. But the thing they truly foresee is, that the most part of the Vintners that have precipitat themselves into the foresaid ill advised practice, must infallably go to ruine, and getting a little ready money into their hand will as certainly escape the Merchant: And therefore the Merchants do again obtest your Lordships, that either the Bill of Advocation may be refused, or the Vintners *ante omnia* ordained to find Caution, specially seeing it is not the cause of thir particular Defenders now pursued, and who may be more Responsal, that is to be regarded, but it is truly the case of all the Vintners in *Edinburgh*, to whom your Lordships Decision in this matter will be a leading Practique.

In respect whereof. &c.

INFORMATION
For
The Merchants of Edinburgh,

Against

John Mitchel &c. Vintners there.

1698.

Pbesdo
Lord Reporter